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Appl. No. 10/840,065  
Amdt. dated Feb. 5, 2007  
Reply to Office action of Nov. 16, 2006

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**REMARKS/ARGUMENTS**

The Examiner has rejected claims 1, 2 and 4-8 as set forth in the amended application under 35 U.S.C. 103(a) as being unpatentable over Farhad 481 in view of Vassar 887 and Cohen 621. The Examiner indicates that Farhad 481 discloses an adjustable height insole insert system with the width of the system being greatest at the point where the upper front heel portion and the upper foot portion meet, see figure 2.

The Examiner indicates that the sides of the insert tapers in both the heel and the foot portion, both in front and behind transition line 32.

It is respectfully submitted that while the Examiner's description of the Farhad reference is technically correct, it does not actually represent the structure disclosed within the reference and more importantly that structure does not deem applicant's amended claims obvious under the requirement of 35 U.S.C. 103 for the following reasons.

Applicant has amended claim 1 to better describe the actual structural nature of applicant's device in which "said sidewall surfaces are vertical and tapered longitudinally from said back heel surface to an area of maximum transverse dimension between a tapered upper front heel portion surface and a tapered upper foot portion surface in longitudinal spaced relation to said arcuate heel surface".

The Examiner's analysis of Farhad 481 in which the "width of the system being greatest at the point where the upper front heel portion and the upper foot portion meet" shown in figure 2 is actually a bottom plan view and clearly shows that the sidewalls adjacent the heel are tapered vertically which in referring to figure 1 while difficult to see given the perspective nature of the drawing is still indicated. It is clear that the engagement upper surface of Farhad as seen in figure 1 is not wider at the transition point, but is in reality wider on the foot portion as opposed to the heel portion upper surface at 12. It is respectfully submitted that this is a critical difference and that the claims as now amended introducing that applicant's sidewall surfaces are vertical and taper longitudinally from the heel, this clearly define a structural difference as illustrated in applicant's figure 3 as compared to the select structure as illustrated in figure 1.

Again, the Examiner's use of figure 2 which is a bottom plan view showing the bottom surface and not the foot engagement surface is misleading, in that context, while more precisely shows the nature of the tapered sidewalls better than that of the figure 1 of the reference.

It is respectfully submitted that reconsideration is therefore requested based on the foregoing and that the claims as now amended place the case in condition for allowance and the same is respectfully requested.

FROM HARPMAN AND HARPMAN 330 758 7507

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